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16 Attorneys for Plaintiff

17 UNITED STATES OF AMERICA

18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 ALEXANDER SMIRNOV,

24 Defendant.

No. CR 2:24-cr-00091-ODW

**DECLARATION OF CHRISTOPHER
M. RIGALI IN SUPPORT OF
GOVERNMENT'S OPPOSITION TO
MOTION TO COMPEL AND FOR
ISSUANCE OF SUBPOENAS**

DECLARATION OF CHRISTOPHER M. RIGALI

I, Christopher M. Rigali, declare as follows:

1. I am an attorney of record for the United States in the above-captioned case. I have personal knowledge of the matters contained in this declaration and, if called as a witness to testify, I would competently testify to them. This declaration is offered in support of the Government's Opposition to Defendant Alexander Smirnov's Motion to Compel and for Issuance of Subpoenas.
2. On October 24, 2024, my office received an email from counsel for the defendant which contained a PDF attachment. The PDF attachment, also dated October 24, 2024, was a letter with the subject line, "*Touhy* Request in *United States v. Smirnov*, 2:24-cr-00091-ODW." Among other things, the letter states: "Please consider this letter (with attachments) as our formal *Touhy* demand pursuant to 28 C.F.R. § 16.21-29 *et seq.* and 5 U.S.C. § 301 for the witnesses listed below." The letter request names 32 FBI agents or employees and seeks their testimony at the upcoming trial in this matter. Although the PDF letter request was "cc'd" to the FBI General Counsel and Head of Office of General Counsel in Washington, D.C., defense counsel's email made clear that the request had not been served on the FBI. Defense counsel wrote: "We have not emailed [FBI General Counsel] a copy yet as we wanted to determine if you would serve the FBI, and if not, confirm that you do not deem it to be a breach of the Protective Order for us to serve [FBI General Counsel]."
3. On October 25, 2024, my office sent a letter, via email, to defense counsel. In our letter, we wrote: "You asked for our position on whether prosecutors can accept service of subpoenas attached to your '*Touhy* Request' letter. . . . We are in the process of determining whether we are able to accept service of the subpoenas and will provide you an answer as soon as we are in a position to do so."
4. Subsequent to receipt of the October 24, 2024 letter request, my office contacted the Justice Department's Civil Division, which typically handles *Touhy* requests

1 served on the Justice Department and components thereof. An attorney from the
2 Civil Division (the “DOJ Civil Attorney”) was assigned to engage defense counsel
3 on their “*Touhy* Request.”

- 4 5. On November 14, 2024, the DOJ Civil Attorney contacted defense counsel via
5 email. The DOJ Civil Attorney advised defense counsel that “under DOJ
6 regulations, we do need to have FBI properly served with any subpoenas on which
7 you intend to proceed; the *Touhy* process cannot go forward solely on the basis of
8 a letter request.” She further explained that the need to effect service should not
9 introduce any delay into the response as the government’s response to the request
10 for official information would depend, in part, on the Court’s evidentiary rulings.
- 11 6. In response to a question posed by defense counsel in a subsequent email, the DOJ
12 Civil Attorney informed defense counsel that “[t]he request for testimony is being
13 evaluated,” and that she was “not, at the time, able to address what position the
14 agency would take if the Court were to permit” the requested evidence at trial.
- 15 7. The DOJ Civil Attorney and defense counsel have exchanged additional
16 communications about service of the subpoenas on the FBI.
- 17 8. As of this filing, the undersigned does not believe the subpoenas have been properly
18 served on the FBI.

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20 Executed on this 21st day of November, 2024 in Washington, D.C.

21 *Christopher M. Rigali*

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